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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 AMAZON.COM INC., *et al.*,

10 Plaintiffs,

Case No. C22-1574-RSL-MLP

11 v.

ORDER

12 DZMITRY KITSENKA, *et al.*,

Defendants.

13
14 I. **INTRODUCTION**

15 This matter is before the Court on Plaintiffs' Amazon.com, Inc., Amazon.com Services
16 LLC, and The Gillette Company LLC ("Gillette") (collectively, "Plaintiffs") *Ex Parte* Motion for
17 Expedited Discovery ("Plaintiffs' Motion").¹ (Pls.' Mot. (dkt. # 23).) Having considered
18 Plaintiffs' submissions, the governing law, and the balance of the record, the Court GRANTS
19 Plaintiffs' Motion.

20 II. **BACKGROUND**

21 On November 4, 2022, Plaintiffs filed this action against Dzmitry Kitsenka, Maryia
22 Kitsenka, "individual[s] or entit[ies] doing business as" eight different Amazon Selling
23

¹ Plaintiffs have also filed a motion for overlength brief (dkt. # 21), which is hereby GRANTED.

1 Accounts, and “Does 1-10,” alleging they sold counterfeit Gillette products through the Amazon
2 Selling Accounts. (Compl. (dkt. # 1).) On February 24, 2023, the Clerk entered default against
3 Dzmitry Kitsenka and Maryia Kitsenka. (Dkt. # 19.)

4 Plaintiffs have made extensive efforts to uncover the identities and locations of the
5 remaining defendants (“Defendants”), including working with private investigators, investigating
6 the information Defendants provided when opening their Amazon Selling Accounts, and
7 searching public records. (Rainwater Decl. (dkt. # 25) at ¶ 4.) These efforts led to the
8 identification of Dzmitry Kitsenka and Maryia Kitsenka and evidence that they operated with
9 “persons overseas who used falsified documents and information in connection with their Selling
10 Accounts[,]” but did not uncover the identities of the remaining Defendants. (*Id.* at ¶¶ 4-5.)

11 Plaintiffs discovered that “individuals or entities responsible for all eight Selling
12 Accounts” used virtual bank accounts provided by Payoneer Inc. (“Payoneer”) to transfer funds
13 to and from their Amazon Selling Accounts. (Haskel Decl. (dkt. # 24) at ¶ 15.) Seven of the eight
14 used email addresses provided by Google LLC (“Google”). (*Id.* at ¶ 16.)

15 Based on these findings, Plaintiffs move for leave to serve third-party subpoenas under
16 Federal Rule of Civil Procedure 45, prior to the Rule 26(f) conference, on Payoneer and Google.
17 (Pls.’ Mot. at 7.) They expect that Payoneer’s records will reveal names and locations of the
18 bank account holders, and Google’s records may reveal names and contact information as well as
19 IP addresses to determine Defendants’ locations. (Rainwater Decl. at ¶¶ 10-11.)

20 **III. DISCUSSION**

21 **A. Legal Standard**

22 Federal Rule of Civil Procedure 26(d) bars parties from seeking “discovery from any
23 source before the parties have conferred as required by Rule 26(f), except in a proceeding

1 exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by
2 stipulation, or by court order.” Fed. R. Civ. P. 26(d)(1). In determining whether to permit
3 expedited discovery, courts in this jurisdiction require that the moving party demonstrate that
4 “good cause” exists to deviate from the standard pretrial schedule. *See Amazon.com, Inc. v.*
5 *Yong*, 2021 WL 1237863, at *1 (W.D. Wash. Apr. 2, 2021) (adopting the “good cause” standard
6 for motions for expedited discovery and finding that plaintiffs demonstrated good cause for
7 expedited discovery); *see also Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276
8 (N.D. Cal. 2002) (applying “the conventional standard of good cause in evaluating Plaintiff’s
9 request for expedited discovery”). “Good cause may be found where the need for expedited
10 discovery, in consideration of the administration of justice, outweighs the prejudice to the
11 responding party.” *Semitool*, 208 F.R.D. at 276. The Ninth Circuit has emphasized that diligence
12 and the intent of the moving party are the focus of the inquiry into good cause. *Johnson v.*
13 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

14 **B. Good Cause for Expedited Discovery**

15 The Court notes that Defendants appear to have actively misled the Plaintiff Amazon
16 entities as to their identities. The Court finds that Defendants should not be afforded the benefit
17 of anonymity in furtherance of their alleged counterfeiting scheme. Plaintiffs have shown
18 diligence in utilizing available means to investigate Defendants’ identities and locations.

19 Having considered the balance of factors, the Court concludes that Plaintiffs’ intent in
20 seeking expedited discovery justifies their request. Courts routinely allow early discovery for the
21 limited purpose of identifying defendants on whom process could not otherwise be served. *See,*
22 *e.g., Music Grp. Macao Com. Offshore Ltd. v. John Does I-IX*, 2014 WL 11010724, at *1-2
23 (W.D. Wash. July 18, 2014) (granting expedited discovery from Twitter, Inc. sufficient to

1 identify Doe defendants); *Digital Sin, Inc. v. Does 1–5698*, 2011 WL 5362068, at *1-2 (N.D.
2 Cal. 2011) (allowing early discovery from internet service providers to identify Doe defendants);
3 *see also Cottrell v. Unknown Corr. Officers*, 1-10, 230 F.3d 1366, *1 (9th Cir. 2000) (explaining
4 that “[t]he Federal Rules of Civil Procedure do not require that a district court dismiss unknown
5 defendants simply because the plaintiff is unaware of the identity of those defendants at the time
6 of the filing of the complaint.”). “Where the identity of the alleged defendant is not known prior
7 to the filing of a complaint, the plaintiff should be given an opportunity through discovery to
8 identify the unknown defendants, unless it is clear that discovery would not uncover the
9 identities, or that the complaint would be dismissed on other grounds.” *Wakefield v. Thompson*,
10 177 F.3d 1160, 1163 (9th Cir. 1999) (cleaned up) (quoting *Gillespie v. Civiletti*, 629 F.2d 637,
11 642 (9th Cir. 1980)).

12 Here, Plaintiffs seek expedited discovery to ascertain sufficient identifying information
13 about Defendants to effect service. Good cause exists where a plaintiff has exhausted its means
14 to identify the defendant through publicly available information and has no other way to identify
15 the bad actors involved in the scheme. *Facebook, Inc. v. Various, Inc.*, 2011 WL 2437433, at *3
16 (N.D. Cal. 2011) (“Courts in [the Ninth] Circuit permit expedited discovery to identify unknown
17 defendants usually when the plaintiff simultaneously can identify no defendants and legitimately
18 fears that information leading to their whereabouts faces imminent destruction.”); *see also*
19 *Semitool*, 208 F.R.D. at 277 (granting expedited discovery where narrowly tailored requests will
20 “substantially contribute to moving this case forward”). Having reviewed Plaintiffs’ declarations,
21 it appears they have exhausted available means to trace specific names and addresses to the
22 various Amazon Selling Accounts. (See Rainwater Decl. at ¶¶ 4-5; Haskel Decl. at ¶¶ 8-12.)
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1 Consequently, Plaintiffs have demonstrated that without expedited discovery, they will not be
2 able to identify the individuals behind the accounts.

3 Furthermore, the Court finds good cause for expedited discovery given Plaintiffs' claims
4 that irreparable harm will result through Defendants' continued use of their trademarks, unfair
5 competition, and false advertising (Compl. at ¶¶ 63, 71, 78). *See Music Grp. Macao*, 2014 WL
6 11010724 at *2 (finding good cause where plaintiffs alleged irreparable harm through
7 infringement and unfair competition); *see also Qwest Commc'n Int'l, Inc. v. WorldQuest*
8 *Networks, Inc.*, 213 F.R.D. 418, 419 (D. Co. 2003) ("The good cause standard may be satisfied
9 . . . where the moving party has asserted claims of infringement and unfair competition."). For
10 these reasons, Plaintiffs' intent in seeking expedited discovery supports a finding of good cause.

11 Finally, the Court finds minimal prejudice to Defendants if Plaintiffs are granted leave to
12 conduct expedited discovery. Plaintiffs' discovery request is narrowly tailored to seek
13 information only from those Payoneer bank accounts and Google email accounts associated with
14 the Amazon Selling Accounts for the purpose of identifying the individuals connected to those
15 accounts. (*See* Pls.' Mot. at 11.) Furthermore, Plaintiffs have requested discovery directed at
16 non-parties—not the Defendants—which courts recognize as "not imposing a significant burden
17 upon defendants." *Yong*, 2021 WL 1237863 at *3.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court GRANTS Plaintiffs' Motion (dkt. # 23). Plaintiffs
20 are granted leave, prior to the Rule 26(f) conference, to serve Rule 45 subpoenas on Payoneer
21 Inc. and Google LLC for the purpose of obtaining information that may reveal Defendants'
22 identities and locations. Plaintiffs shall provide a copy of this Order with each subpoena issued
23 pursuant thereto.

1 Dated this 22nd day of May, 2023.

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4 MICHELLE L. PETERSON
5 United States Magistrate Judge
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